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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,668	08/25/2006	Andrew Childs	66307-374-7	3787
25269	7590	12/12/2008	EXAMINER	
DYKEMA GOSSETT PLLC			WANG, CHUN CHENG	
FRANKLIN SQUARE, THIRD FLOOR WEST				
1300 I STREET, NW			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20005			1796	
			MAIL DATE	DELIVERY MODE
			12/12/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/590,668	CHILDS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chun-Cheng Wang	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 August 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This office action is in response to the Amendment filed on 08/27/2008. Claims 1-11 are now pending.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this section can be found in a prior Office Action.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda (US 4254105).

The rejections stand as per the reasons set forth in the previous Office Action, incorporated herein by reference.

6. Claims 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Li et al. (US 3779907).

The rejections stand as per the reasons set forth in the previous Office Action, incorporated herein by reference.

***Response to Arguments***

1. Applicant's arguments filed 08/27/2008 have been fully considered but they are not persuasive.
2. Applicants' argument: "...it has been **postulated** that the internal phase is surrounded by double layers of surfactant molecules..." on page 2, lines 6-7. And "Emulsion and polyaphron dispersions have different properties" on page 2, lines 8-9. "...the advantages of polyaphron dispersion over an emulsion are that it can be diluted to any extent by the addition of continuous phase without the addition of more surfactant. ...Thus, polyaphron dispersion is more robust." on page 2, lines 10-16. "There is not teaching or suggestion in Fukuda of using polyaphron dispersions.
3. Response: The structure of the W/O/W multiple emulsion of Fukuda clearly showing the emulsion having external and external phases in Fig. 1. The reference of Fukuda's meets the limitations of the rejected claims 1-7, 9 and 11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., double layers of surfactant and different properties) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
4. Applicants' argument: "There is not teaching or suggestion in Fukuda of using polyaphron dispersion" page 4, lines 1-3; and "It was not known that compositions...as stable compositions." page 4, lines 6-7.

5. Response: The W/O/W multiple emulsion of Fukuda meet the limitations of the rejected claims 1-7, 9 and 11. Also in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., higher level of internal phase and a lower level of surfactants) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. Applicants' argument: "Li et al. cannot overcome the deficiencies of Fukuda." Page 4, line 13.

7. Response: Applicant admitted "polyaphron dispersions containing a single liquid external phase and a single liquid internal phase were known at the priority date of this application." on page 4 lines 4-6. And both Fukuda and Li et al. teach the limitations of claim 1. It is appropriate rejection on claims 8 and 9 by Li et al. since Li et al. teaches all the limitations of polyaphron and limitations recited in both claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun-Cheng Wang whose telephone number is (571)270-5459. The examiner can normally be reached on Monday to Friday w/alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ling-Siu Choi/  
Primary Examiner, Art Unit 1796

Chun-Cheng Wang  
Examiner, Art Unit 1796

/CCW/